

MEMORANDUM

TO: Designated Institutional Officials
 Institutional and Program Administrators
 Member Organizations of the ACGME
 Residency Review Committee Chairs
 Residency Review Committee Executive Directors
 Resident Physician Organizations

FROM: David C. Leach, M.D.
 Executive Director, ACGME
 (312) 464-4950

DATE: March 1, 2000

RE: Statement of ACGME Relating to November 26, 1999 Decision of National Labor Relations Board
 Holding Resident Physicians to be "Employees" under the National Labor Relations Act

On November 26, 1999, the National Labor Relations Board (NLRB) rendered a decision holding resident physicians to be "employees" under the National Labor Relations Act. Boston Medical Center Corp. and House Officers' Association/Committee of Interns and Residents. In so holding, the NLRB reversed two of its prior decisions, issued in 1976 and 1977, in which it had held that resident physicians are not "employees" under the National Labor Relations Act (NLRA). The major impact of the decision is that resident physicians in teaching hospitals and related settings who are not already covered by a state collective bargaining law, may organize in labor unions and bargain collectively as "employees," with the full rights and protections of the NLRA.

As the accrediting organization for medical residency programs in this country, the ACGME establishes educational standards for medical residency programs and compares individual programs with the standards. This process results in accreditation decisions for programs.

Numerous persons and entities rely upon ACGME accreditation decisions for assurance that residency programs have met substantially its educational standards and are thus capable of educating physicians to engage in the independent practice of medicine. These persons and entities include medical students, resident physicians, medical specialty boards, hospitals, healthcare institutions, state physician licensing agencies and HCFA.

At its June 23, 1998 meeting, the ACGME approved revisions to the Institutional Requirements that addressed several issues to protect residents in their working environment. The revisions made at that time were based on the following principles:

1. Residents are first and foremost students, rather than employees, and all accreditation standards and activities reflect this distinction.
2. Residents need to be protected as students with respect to their educational environment and the clinical settings in which they learn.
3. Residency settings vary substantially from place to place throughout the country. Thus, solutions to the resident protection issues which have been articulated should be implemented at local levels rather than by a single national plan. Institutions must be accountable for addressing resident concerns and issues at the local level.

The ACGME has applied its Program and Institutional Requirements for some time to medical residency programs at state institutions with physician resident unions, and it does not anticipate substantial changes in its standards as a result of the Boston Medical

Center decision. Nevertheless, the ACGME's Institutional Review Committee (IRC) seeks recommendations to be forwarded to the ACGME at its June 26-27, 2000, on potential amendment of Institutional and Program Requirements due to the Boston Medical Center decision.

The ACGME invites suggestions on amendment to the current issues of all requirements due to the Boston Medical Center decision. Such suggestions should make specific reference to the particular requirement(s), they should be addressed to Ms. Cynthia Taradejna, Executive Director of the Institutional Review Committee, and they should be received by the ACGME no later than April 1, 2000. Responses can also be e-mailed to positionstmt@acgme.org

Institutions are requested to circulate this memorandum to its Graduate Medical Education Committees and to all program directors and residents. A copy of this memorandum may also be found on the ACGME's web site (www.acgme.org).

cc: ACGME Members
 Sheldon Horowitz, M.D., ABMS
 Frank A. Simon, M.D., AMA
 Reed V. Tuckson, M.D., AMA
 Michael E. Whitcomb, M.D., AAMC
 Members, Institutional Review Committee